

No. 21803

IN THE
United States
Court of Appeals

For the Ninth Circuit

UNIFORM OIL COMPANY,
a Montana corporation,

Appellant,

vs.

PHILLIPS PETROLEUM COMPANY,
a Delaware corporation,
W. J. BRIDGES, DONALD W. CULLEN,
CURTICE GARDNER and JAMES H.
NORWOOD,

Appellees.


Appellant's Brief on Appeal

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CURTICE GARDNER and JAMES H.
NORWOOD,

Appelles.

Appellant's Brief on Appeal

JURISDICTIONAL STATEMENT

This action was commenced by Appellant in the United States District Court for the District of Montana, Helena Division, on March 30, 1964, under the Anti-Trust Laws of the United States. 15 U.S.C. Section 1, 2, 15 and 26 (Record [Amended Complaint]—P. 2).

The Appellant, a Montana Corporation, was the owner and operator of a retail gasoline and service station in the City of Helena, Montana (Record

[Amended Complaint]—P. 2, 4) as an “Independent”.

The Appellee, Phillips Petroleum Company, was a Delaware Corporation, engaged in the business of manufacturing gasoline and other petroleum products, and selling the same, both at wholesale prices to dealers and at retail prices directly to consumers, throughout the United States, including the City of Helena, Montana (Record [Amended Complaint]—P. 2) as a “Major” oil company (Record [Amended Answer]—P. 9).

The Appellee, W. J. BRIDGES, was engaged in Helena, Montana as a bulk dealer handling the Appellee, Phillips Petroleum Company’s, products (Record [Amended Complaint]—P. 3) and also the owner and operator of a gasoline station in Helena, Montana selling Appellee, Phillips Petroleum Company’s, products. (Record [Amended Complaint]—P. 3).

The Appellee, DONALD W. CULLEN, was the sublessee and operator of a retail gasoline sales and service station in Helena, Montana (Record [Amended Complaint]—P. 3) selling products of Appellee, Phillips Petroleum Company.

The Appellee, JAMES H. NORWOOD, was the sublessee and operator of a retail gasoline sales and service station in Helena, Montana (Record [Amended Complaint]—P. 3) selling products of Phillips Petroleum Company.

The Appellee, CURTICE GARDNER, was the sublessee and operaor of a retail gasolin sales and service station in Helena, Montana (Record [Amended Com-

plaint]—P. 3) selling products of Phillips Petroleum Company.

Appellant purchased petroleum products, including gasoline, from an out-of-state supplier, which products were produced outside of the State of Montana and delivered to Appellant in interstate commerce. Appellant sold a substantial portion of its products to non-residents of the State of Montana for use in interstate commerce. Appellant honored all “Major” oil company credit cards and was paid for products purchased with these credit cards by an agency outside the State of Montana and the collection of such accounts were processed across state lines and Appellant was engaged in interstate commerce. (Record [Amended Complaint]—P. 4, 5).

All of the Appellees were similarly engaged in interstate commerce. (Record [Amended Complaint]—P. 5).

Appellants Amended Complaint alleges that Appellees combined and conspired to eliminate competition from the gasoline marketing industry in the City of Helena, Montana and in furtherance of their unlawful combination, conspiracy and common plan have combined and conspired to destroy the business of the Plaintiff and other “Independents” and eliminate from the City of Helena all of the “Independents”. (Record [Amended Complaint]—P. 5).

The United States District Court for the District of Montana found that it did have jurisdiction.

This Court has jurisdiction of this appeal under 28

U.S.C. Sections 1291, 1294 and Rule 75 of the Federal Rules of Civil Procedure as set forth in Title 28 of the United States Code.

STATEMENT OF THE CASE

The questions involved in this Appeal, and the manner in which raised, are set forth in the specifications of error which are each set forth separately hereinafter in this statement of the case; but generally consist of the rejection of Exhibits and evidence offered by the Appellants and the granting of motions for directed verdicts in favor of the Appellees, after the close of Appellant's case.

For convenience, the Appellant, Uniform Oil Company, shall hereinafter be referred to as "Uniform Oil Company"; the Appellee, Phillips Petroleum Company shall be referred to as "Phillips" and Appellees, DONALD W. CULLEN, CURTICE GARDNER, and JAMES H. NORWOOD shall be referred to by their respective last names.

The Uniform Oil Company was formed in late 1960, or 1961, (Tr. 8) for the purpose of engaging in the business of selling gasoline and other products as an "Independent" and commenced its business in 1962. The term "Independent" is normally used in the gasoline industry to identify and independent gasoline dealer from one connected with a "Major" oil company, either by lease or as a supplier of a branded product. The "Independent" sells in his own name, does not own a refinery or his own products, nor does he have the

benefit of national advertising and generally, throughout the industry, sells gasoline for approximately two cents less per gallon than a major company (Tr. 9).

The major oil companies sold well in excess of eighty per cent of all the gasoline sold in the State of Montana, and throughout the City of Helena, Montana. (Tr. 27).

Uniform Oil Company purchased gasoline directly from a refinery in Sunburst, Montana, and from the Yellowstone Pipe Line, which extends from Billings, to Spokane, Washington. (Tr. 12). The pipeline was owned by various major oil refineries and transported, through its pipeline, gasoline refined in Billings, Montana, from crude oil originating in the Elk Basin Field, Wyoming. (Tr. 13).

Uniform Oil Company honored all major oil company credit cards and was paid for the products purchased by the use of these credit cards by the Big West Oil Company, less six per cent carrying charge, on accounts processed in Spokane, Washington by mail. (Tr. 10, 11).

Phillips Petroleum Company, a Delaware Corporation, was a major oil company, engaged in the business of manufacturing gasoline and other petroleum products and selling the same throughout the United States, including the City of Helena Montana. (Record P. 3, 9)

W. J. BRIDGES, was a bulk dealer in Helena, Montana and prior to 1961 delivered gasoline to Phillips Petroleum Company's stations in Helena, as "con-

signee", after 1961, BRIDGES continued as bulk dealer for Phillips Petroleum Company but became a "Jobber" (Tr. 59, 60, 61, 62). Phillips Petroleum Company, at this time, leased the stations, including the one owned by W. J. BRIDGES, to W. J. BRIDGES and he, in turn, arranged for the "Operators" on an oral agreement furnishing the station and certain equipment on a rental basis of one cent per gallon of gasoline sold. (Tr. 63, 64, 65).

DONALD W. CULLEN, CURTICE GARDNER, and JAMES H. NORWOOD were "Operators" of gasoline stations in the City of Helena, Montana, under the brand name of the Phillips Petroleum Company, using its advertising and standard designed uniforms, and on the basis set forth above. (Tr. 65, 67, 70).

Phillips Petroleum Company had control over the operations of W. J. BRIDGES by use of the lease agreement, (Tr. 63, 64), national advertising, uniform station appearance and National Credit Cards. (Tr. 117, 118, 119). During the month of March, 1964, W. J. BRIDGES met in Spokane, Washington with his "boss" and other management personnel of the Phillips Petroleum Company and discussed gasoline prices. (Tr. 73, 74, 75, 76, 79, 80, and 81). W. J. BRIDGES also in the month of March, 1964, met with the "Operators", DONALD W. CULLEN, JAMES H. NORWOOD, and CURTICE GARDNER, and one DON HAMILTON, representative of Phillips Petroleum Company, and discussed lowering of gasoline prices, the matter of the "Independents" operation and the lowering of the

prices of gasoline to 33.9 cents per gallon (Tr. 132, 158, and 159).

After these meetings (in Spokane and with the "Operators", including the Phillips Petroleum Company representative) on or about March 28, 1964, W. J. BRIDGES furnished each of the stations with large signs, commonly used for gas wars, (Tr. 83, 84) and on each station posted the same price for gasoline lower than the Uniform Oil Company and other Independents. The price of gasoline was reduced by these Phillips operators from 38.4 cents per gallon to 33.9 cents per gallon, (Tr. 32), which reduced price continued into the fall of 1964.

Uniform Oil Company commenced this law suit on March 31, 1964, served all of the parties named, including Phillips Petroleum Company, and thereafter in the month of July, 1964, Phillips Petroleum Company paid a subsidy which insured the "Operators" a five cents a gallon profit, regardless of how low the price descended. (Tr. 169, 92, 93).

SPECIFICATION OF ERROR

The statement of points heretofore filed in this Appeal contain ten Specifications of Error (Record 65, 66). Appellant will not argue the first six statement of points, as the same pertain to the rejection of Appellant's preposed Exhibits One through Four, inasmuch as the testimony contained in the offered Exhibits was also introduced by the testimony of the witness, JOHN VANCE.

SPECIFICATION OF ERROR No. I

The Court erred in refusing the testimony of JOHN VANCE with reference to a meeting in the Steamboat Block in Helena, Montana, in the month of March, 1964, and in denying the offer of proof with regard to his proposed testimony (Tr. 32-40). The proceedings in the trial with reference to this evidence is set out as follows:

Q. "Now, during the month of March, 1964, did you have occasion to attend a meeting in the Steamboat Block—

A. Yes, I did.

Q. —in Helena, Montana?

A. Yes.

Q. And at that meeting who was present?

A. Well, most of the retail operators, those who sold gasoline at retail to the public in Helena, and several who were also wholesalers or jobbers.

Q. Now with reference to anyone named in this lawsuit, were any of those people at the meeting.

A. I think—and I am not sure, but I think that all of them were there.

Q. Was Mr. Bridges there?

A. I think so, but I don't—I really don't remember. There were, I would say, twenty or thirty people there, and, of course, service stations stay open a long time, so, undoubtedly, a percentage of people in the business in Helena were not there because they were keeping their stations open.

Q. But you said you attended the meeting?

A. I did.

Q. Do you recall the day?

A. No. It was—after the middle of March is about the closest I could come to pinpointing the day.

Q. Do you recall the day of the week?

A. No, I do not.

Q. And who called the meeting?

A. Well, the meeting was called by the retail gasoline dealers association here in Helena and, as I recall—and again my memory may fail me, but as I recall Lloyd Dickey presided at the meeting.

Q. What is this retail gasoline dealers association?

A. It is an association of the dealers in Helena, and it had been through the years quite active. Prior to this meeting it had not been very active.

Q. And what did it consist of? What—

A. It consisted of the men who were in the gasoline business.

Q. Did that include all of the people in the gasoline business?

A. I don't know the entire membership. But I suspect a majority.

Q. A corporation? Is it a corporation or association?

A. No. I think association.

Q. Did it have regular officers?

A. Yes, it did.

Q. And who were the officers at that time?

A. I don't know, but I assume Lloyd Dickey was the president.

Q. Were you a member of the association?

A. As I recall Uniform Oil Company was not a member of the association.

Q. Then how come you went to the meeting?

A. I was invited to come to the meeting to attempt to forestall a price war.

Q. What was the purpose of the meeting?

A. To attempt to forestall a price war. Everybody was terribly concerned about Phillips reducing the price.

Q. And then—

MR. PICOTTE: Move the witness' answer be stricken as hearsay, Your Honor, and the jury instructed to disregard it.

THE COURT: It may; and the jury will disregard the answer.

BY MR. SKEDD:

Q. Did you receive a written notice of the meeting?

A. I don't recall.

Q. But you attended?

A. I did.

Q. Now, what was—then was there a discussion had at the meeting with reference to prices?

A. Yes, there was.

Q. And what was the general discussion with regard to prices?

MR. SMITH: May it please the Court, we are going to object to any testimony unless it be confined to that portion of the matter in which a discussion was had between this witness and Mr. Cullen to which reference has previously been made in the pre-trial orders and responses to pre-trial orders.

MR. PICOTTE: Same objection from the individual defendants.

THE COURT: What were you intending to bring out here?

MR. SKEDD: The purpose of the meeting; the discussion at the meeting with regard to the prices, and statements made by Bridges and the other individual defendants at that time.

THE COURT: Are they mentioned in the pre-trial?

MR. SKEDD: They are mentioned in the pre-trial statement, yes.

THE COURT: Well, be careful, and stay within that. The objection will be overruled.

MR. PICOTTE: Court please, very crucial thing; I wonder if this might warrant some discussion between Court and counsel before we proceed with it, based on what happened to it during the pre-trial proceeding?

THE COURT: Well, his pre-trial responses talk

about this meeting in the Steamboat Block. I recall that much of them, when they do discuss statements made by these various defendants.

MR. SKEDD: Trying to find it, Your Honor, so I can stay within it.

(Pause while Mr. Skedd looks through papers).

BY MR. SKEDD:

Q. Now confine yourself, if you can—

THE COURT: This is in page two, item three.

MR. SKEDD: Yes; W. J. Bridges; Lloyd Dickey; Bryant Anderson; Jim Higgins; John Vance and others constituting a majority of the retail gasoline—

THE COURT: That other business isn't going to cover anything; so stay with the named people.

MR. PICOTTE: I would like to voir dire, if I may, Your Honor, on foundation? If he is going to offer the conversation now.

THE COURT: You may. In view of the witness' statement with respect to his memory as to the persons present, you can voir dire on that.

MR. PICOTTE: Yes, that is exactly what I wanted to do, if I may, Your Honor.

VOIR DIRE EXAMINATION

BY MR. PICOTTE:

Q. Mr. Vance, the conversation that you are referring to is with J. Bridges, this defendant here (indicates) one of the participants therein?

A. I am not sure what the conversation is, perhaps—did I just say—did I refer to a conversation? I referred to a meeting—

MR. SKEDD: At the meeting.

THE WITNESS:—and persons present, as I remember.

MR. PICOTTE: Obviously, if the Court please, the witness doesn't understand the confinement of the proof here by the Court's previous order, and I don't know that that is a suitable subject for the jury or not.

MR. SKEDD: I would like to discuss this with

the Court, too, out of the presence of the jury.

THE COURT: Very well, we will be in recess for five minutes and I will see counsel in Chambers.

(The following is a conference reported in Chambers):

THE COURT: Go ahead, make your offer of proof.

MR. SKEDD: Comes now the Plaintiff and offers to prove through the witness on the stand, John Vance, that at a meeting of the Retail Gasoline Dealers Association in Helena, Montana, at the Steamboat Block in the month of March, 1964, that the purpose as stated for the meeting was to prevent the Phillips Petroleum Company from lowering its prices and starting a gas war; and that at that meeting either the defendant Bridges or the individual defendants stated that the Phillips Petroleum Company was putting the pressure on Bridges—

THE COURT: Who said this?

MR. SKEDD. Either Bridges or the individual defendants.

THE COURT: And you don't know which one?

MR. SKEDD: No.

And that the members, or the persons attending the meeting requested of Bridges that he not lower the prices in the City of Helena and community, because it would start a gas war.

MR. PICOTTE: Is that it?

MR. SKEDD: Yes.

MR. PICOTTE: I had better make my objection first, don't you suppose, counsel—

MR. SMITH: Yes.

MR. PICOTTE:—because you are going to—

To which the individual defendants object on the following grounds: One, incompetency. Two, that as to any statements made by anyone other than the individual defendants, it would be hearsay. Three, that such evidence would be inadmissible as to any one of the individual defendants

who could not be identified by the witness on the stand. Four, that it is irrelevant and immaterial; not probative of any issue in this case, and, specifically, not probative because pressure by Phillips would not be relevant to a conspiracy. In fact, it would be a hundred and eighty degrees from a conspiracy.

MR. SMITH: The defendant Phillips objects to this offer of proof, first of all, on the ground that it is hearsay. There being no showing that any person representing Phillips was present.

Second, on the ground and for the reason that Mr. Vance has already identified at least Mr. Bridges as being a jobber, and not any way an agent of Phillips.

Third, on the ground that there has been no agency relationship shown which would in any way bind Phillips.

Next, on the ground that the identity of the speaker—whether it be Bridges or other individual defendants—has not been shown and, apparently, cannot be shown; and that this would be hearsay two or three times removed so far as Phillips.

And lastly, that it is inadmissible for any purpose in the lawsuit, and, let me say, comes within the cautionary instruction which the Court has given to the jury, and shows how far the defendant Phillips would be placed at a disadvantage by this type of evidence being introduced.

THE COURT: Well, the objection will be sustained except to the extent, if you can, you may prove that Bridges was asked not to lower prices—that much. If you can prove that somebody requested Bridges not to lower his prices I will permit that to be proved.

But insofar as Phillips is concerned, certainly it isn't bound by anything that is done here.

MR. SKEDD: Unless we can show this agency. Or show or be inferred by the very nature of the operation that it is, in fact, an agency.

THE COURT: Well, from anything I see you

are going to have to prove that as foundation first, because I don't think you can do it from what I read of the depositions, so on. So you would have to do that first. And Phillips, to date, isn't in this meeting.

Now, as to the individual defedants, I don't think it is fair for a witness to say: Well, someone of these people said something. Because then, if I admit it, the jury has got to pick out which one said it, and maybe tagging it on somebody that didn't say it; because it is only, probably, useful against the one that did say it."

SPECIFICATION OF ERROR No. II

The Court erred in its finding of fact (if it is a finding) (Tr. 181).

"That as the Court views the evidence there is not sufficient evidence now, if it be assumed that a conspiracy has been proved as to the individual defendants, to indicate that the Defendant, Phillips Petroleum Company, had any knowledge of that conspiracy. The act of Phillips, as the Court views it in granting what has been variously referred to as the subsidy and the competitive price adjustment, in the Court's opinion would not be sufficient to make them guilty of an antitrust violation in the absenue of some knowledge that an illegal conspiracy had been created by the individual defendants." (Tr. 181).

SPECIFICATION OF ERROR No. III

The Court erred in granting Defendant, PHILLIPS PETROLEUM COMPANY, Motion for Directed Verdict. (Tr. 180).

SPECIFICATION OF ERROR No. IV

The Court erred in granting the Motion of W. J. BRIDGES, DONALD W. CULLEN, CURTICE

GARDNER and JAMES H. NORWOOD for a Directed Verdict. (Tr. 191).

ARGUMENT

Since the entire Argument relates to the taking of the case from the jury, by the Court, and because the Court did not make detailed findings of fact, the Specifications of Error shall be combined as one.

SUMMARY

The evidence presented was sufficient to raise a jury question as to whether Phillips, the "Jobber" Bridges, and the "Operators", Norwood, Cullen and Gardner conspired to fix gasoline prices, and attempted to monopolize the gasoline trade in the City of Helena, Montana, in violation of the Sherman Act and caused damages to Appellant recoverable under the Clayton Act.

I.

ANTI-TRUST LAWS INVOLVED

The anti-trust laws under which this case was brought are set forth in part as follows:

Section 1 of the Serman Antitrust Act [15 U.S.C.A. §1], *dealing with restraints of trade, provides that*

"Every contract, combination * * * or conspiracy, in restraint of trade or commerce * * * is * * * illegal * * *."

Section 2 of the Sherman Antitrust Act [15 U.S.C.A. §2 declares that:

"Every person who shall monopolize, or attempt to monopolize, * * * or conspire with any other person * * * to monopolize any part of the trade

or commerce * * * shall be * * * guilty of a * * * [violation of the anti-trust laws].”

Section 4 of the Clayton Act [15 U.S.C.A. § 15] authorizes:

“Any person who shall be injured in his business or property by reason of anything forbidden in antitrust laws may sue therefor * * * and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney’s fee.”

The purpose of the Sherman Antitrust Act is to preserve and advance our system of free, competitive enterprise; to encourage, to the fullest extent practicable, free and open competition in the market place; and to prevent the accomplishment of a monopoly in any business or industry; all to the end that the consuming public may receive better goods and services at a lower cost. So, any unreasonable interference, by contract, or combination, or conspiracy, with the ordinary, usual and freely-competitive pricing or distribution system of the open market in interstate trade and commerce, constitutes an unreasonable restraint of interstate trade, and is a violation of the Federal antitrust laws. *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons*, 340 U.S. 211, 71 S.Ct. 259, 95 L.Ed. 219 (1951), reh. denied 340 U.S. 939, 71 S.Ct. 487, 95 L.Ed. 678; *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 68 S. Ct. 915, 92 L.Ed. 1260 (1948); *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 60 S.Ct. 811, 84 L.Ed. 1129 (1940), reh. denied 310 U.S. 658, 60 S.Ct. 1091, 84 L.Ed. 1421; *I. Toulmin, Anti-Trust Laws of the United States* Ch. 4 (1949).

II.

EVIDENCE PRESENTED

A. *Interstate Commerce*

Gasoline purchased by Appellant was obtained from the Yellowstone Pipe Line, which extends from Billings, Montana, to Spokane, Washington (Tr. 12). The pipeline was owned by various major oil refineries and transported, via the pipeline, gasoline refined in Billings, Montana, from crude oil originating in Elk Basin Field, Wyoming (Tr. 13). Appellants honored all major oil company credit cards and was paid for these products on accounts processed in Spokane, Washington, by mail. (Tr. 10, 11).

Restraint of trade as used within the antitrust laws means in restraint of trade and commerce which takes place between persons or business organizations in one State and those in another State; that is to say, trade and commerce which moves or flows or takes place, not wholly within the boundaries of a single State, but across State lines from one State into one or more other States. To restrain interstate trade and commerce means, then, to interfere unreasonably with the ordinary, usual, and freely- competitive pricing or distribution system of the open market in interstate trade and commerce. *Simpson v. Union Oil Co.*, 337 U.S. 13, 84 S.Ct. 1051, 12 L.Ed. 2d 98 (1964) ; *Radian Burners, Inc. v. Peoples Gas, Light & Coke Co.*, 364 U. S. 656, 660, 81 S.Ct. 365, 367, 5 L.Ed. 2d 358 (1961) ; *Klors v. Broadway-Hale Stores*, 359 U.S. 207, 79 S.Ct. 705, 3 L.Ed. 23 741 (1959) ; *Apex Hosiery Co. v. Leader*.

The amount or quantity or value of the interstate commerce involved or affected by an unreasonable restraint of trade is immaterial. The Sherman Antitrust Act brands as unlawful any contract or combination or conspiracy, which would operate to restrain unreasonably any interstate trade and commerce, regardless of how small in amount or quantity or value. *United States v. Yellow Cab Co.*, 332 U.S. 218, 67 S.Ct. 1560, 91 L.Ed. 2010 (1947); *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 225 n. 59, 60 S.Ct. 811; *Elizabeth Hospital, Inc. v. Richardson*, 269 F.2d 167 (8th Cir. 1959), cert. denied 361 U.S. 884, 80 S.Ct. 155, 4 L.Ed. 2d 120 (1960); *United States v. Learner Co.*, 215 F. Supp. 603 (D. Haw. 1963).

B. *Persons Involved in Conspiracy.*

Phillips Petroleum Company is a Delaware corporation (Record [Amended Complaint] 2, [Answer] 9). W. J. Bridges, Donald W. Cullen, Curtice Gardner and James H. Norwood (Tr. 61-71) are individuals.

The Sherman Anti-trust Act when using the word "person" includes not only every individual, but also every corporation, partnership and every other organization, of every kind and character. *United States v. A & P Trucking Co.*, 358 U. S. 121, 79 S.Ct. 203, 3 L.Ed. 2d 165 (1958); *United Mine Workers of America v. Coronado Coal Co.*, 259 U.S. 344, 42 S.Ct. 570, 66 L.Ed. 975 27 A.L.R. 762.

C. *The Conspiracy*

Business Arrangement

The business arrangement between Bridges and Phillips was termed "Jobber" (Tr. 59), as distinguished from a "Consignee" (Tr. 59, 60). Phillips either owned or had leases on all of the gas stations involved (Tr. 62-70) and either leased or sub-leased them to Bridges, including a station owned by him (Tr. 63). Bridges then entered a verbal agreement with each of the "Operators", Cullen (Tr. 65), Norwood (Tr. 67) and Gardner (Tr. 70) to rent the stations on the basis of one (1) cent per gallon. Phillips advertised nationally and maintained a credit card system, designated as "Phillips 66"; each had uniform Phillips 66 painting (Tr. 117-118); Phillips representatives visited and inspected the stations (Tr. 121, 122). Regardless of the terminology used, Bridges was effectively under the domination and control of Phillips, and Bridges was, in turn, in complete control and domination of the "Operators". The jury may infer that Phillips gave Bridges authority to act for it in conspiracy to fix the gasoline prices.

A corporation is in law a person, but of course it cannot act otherwise through its directors, or officers, or employees, or other agents. The law therefore holds a corporation responsible for all unlawful acts of its directors, or officers, or employees, or other agents, provided such unlawful acts are done within the scope of their authority, as would usually be the case if done in the ordinary course of their employment, or in the

ordinary course of the corporation's business. Authority to act for a corporation in a particular matter, or in a particular way or manner, *may be inferred from the surrounding facts and circumstances shown by the evidence in the case. That is to say, authority to act for a corporation, like any other fact in issue in a civil case, need not be established by direct evidence, but may be established by indirect or circumstantial evidence. Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229, 38 S.Ct. 65, 62 L.Ed. 260 (1917); *Hartford-Empire Co. v. U.S.*, 323 U.S. 386, 65 S.Ct. 373, 89 L.Ed. 322 (1945), supplemented 324 U.S. 570, 65 S.Ct. 815, 89 L.Ed. 1198 (1945); *Steere Tank Lines, Inc. v. United States*, 330 F.2d 719 (5th Cir. 1964).

Circumstances Involved

In middle March, 1964, Bridges met with his "boss" and other management personnel of Phillips in Spokane, Washington and discussed lowering gasoline prices (Tr. 73, 74, 75, 76, 79, 80 and 81) and asked for assistance. Also in March, 1964, Bridges met with the "Operators" Cullen, Norwood and Gardner and Don Hamilton, a representative of Phillips, and discussed the lowering of gasoline prices to 33.9 cents per gallon and the matter of the "Independents" operations (Tr. 132, 158, 159). Bridges furnished each of the stations with large signs commonly used for gas wars (Tr. 83, 84) on March 28, 1964 and on that day each lowered their prices on regular gasoline from 38.4 cents per gallon to 33.9 cents per gallon (Tr. 132), which reduced price continued until the fall of 1964.

In July 1964, Phillips paid a subsidy insuring the “Operators” a profit of five (5) cents per gallon, regardless of how low the price descended (Tr. 169, 92, 93).

Conspiracy is a combination of two or more persons, by concerted action to accomplish some unlawful purpose or to accomplish some lawful purpose by unlawful means. So, a conspiracy is a kind of partnership, in which each member becomes the agent of every other member. The essence of a conspiracy is a combination or agreement to violate or to disregard the law. The evidence need not show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished. What a preponderance of the evidence in the case must show, in order to establish proof that conspiracy existed, is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan. *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 60 S.Ct. 982, 84 L.Ed. 1311, 128 A.L.R. 1044 (1940); *Eastern States Retail Lumber Dealers’ Ass’n. v. United States*, 234 U.S. 600, 611, 612, 34 S.Ct. 951, 954, 58 L.Ed. 1490 (1914); *Girardi v. Gates Rubber Co. Sales Div., Inc.*, 325 F. 2d 196 (9th Cir. 1963); cf. *United States v. Standard Oil Co.*, 316 F.2d 884, 199 (7th Cir. 1963).

Curtice Gardner, one of the “Operators” testified

in a deposition taken October the 24th, 1966, made changes thereto later on and testified with regard each during the trial. The testimony of Curtice Gardner is set out in full in Appendix "A". Also for clarity, and for a comparison, portions of the deposition testified to at the trial, the changes made in the deposition, testimony at trial are set forth for the Court in Appendix "B".

Gardner first on deposition testified that Phillips set the prices (Tr. 123) ; in his deposition changes (Tr. 124) and on trial, he testified that he set the prices for gasoline sold at this station. (Tr. 125).

Gardner testified on deposition that he didn't know whether Phillips or Bridges set the prices, "it was just like it is right now. They tell you to put so much on the pump and that is what it goes" and that "they tell you the price you are going to sell it for?" (Tr. 127), later his testimony on deposition was changed to say he made the decision on the change of prices (Tr. 128) and on trial, said that he put the prices on the pumps (Tr. 126, 127).

Gardner on trial stated that the subsidy for keeping his price of gasoline low came from Bridges and he did not know who originated it (Tr. 139) ; in his deposition he stated that the subsidy "automatically come through, originally come from Phillips Company, I suppose." (Tr. 140).

Gardner testified on deposition that prior to the lowering of the price of gasoline the prices were on the pumps in small letters on the meter that ticks off

the amount of gasoline sold and computes the price (Tr. 141, 142); and that Jim Bridges put up a large gas war sign and that he knew that he didn't or his employees (Tr. 147); Gardner in his changes to deposition stated that he didn't think that he put up the signs but he did put the prices on them (Tr. 148); at the trial he testified that either he or his help put up the sign (Tr. 144).

Gardner testified that the changes in the deposition were his own and that he didn't discuss the changes with his attorney and he told him what to write (Tr. 129-131). This testimony is set out in full as follows:

“Q. Now, when did you make these changes; both these two that you talked about in your deposition?

A. Well, it was after this.

Q. Well, where? Where did you make the changes; at what place?

A. You mean where—

Q. Let me withdraw that.

A. I don't know what you mean about where or when.

Q. Did you receive that deposition from the reporter that took it here in Helena?

A. Did I receive that from him?

Q. Yes.

A. No.

Q. Did you go to the notary's office, Mrs. Gwen Blacker, to pick that deposition up when it was completed to read it?

A. I don't think I ever went anywhere to pick it up.

Q. I don't hear you.

A. I said I don't think I ever went anywhere to pick up anything like this.

MR. PICOTTE: Speak up a little louder, Curt.

THE WITNESS: I don't remember picking anything up. Went and got—went to my lawyer.

BY MR. SKEDD:

Q. You went to your lawyer's office, and that is where you went over the deposition?

A. I went up and told him to make the changes. After I got to thinking about it I knew they was wrong.

Q. And those are your own changes?

A. Yes.

Q. Did you discuss the changes with your attorney?

A. Didn't discuss 'em, no. I told him what to write.

Q. These are you words, then in the changes?

A. Yes.

Q. And the reasons therefor?

A. Yes.

Q. And did you write them in handwriting?

A. No.

Q. Did you dictate them on a dictating machine?

A. I don't know—

Q. Sir?

A. Well, I don't remember whether there was anybody there or not.

Q. Did you dictate them to a stenographer?

A. Just Gene and I was there, I'm sure. Just Gene and I. Just Gene.

Q. These answers are typed out, are they not, these charges?

A. Sure.

Q. They are not in your handwriting?

A. Huh? No. of course not. Not this. (Indicates)

Q. That is not your terminology?

A. Well, it is too.

Q. You mean when you changed that—

A. Well—

Q. —that deposition you said, on page—

change one, the one we referred to: Strike the answer and substitute, quote, if you mean the retail—

A. I may not have said exact words like that.”
The testimony of Mr. Gardner illustrates the control and domination that Phillips and Bridges possessed over the “Operators”.

Evidence of Conspiracy as a Whole

It is unlikely in a case such as this that one of the participants will suddenly jump up and confess as sometimes occurs in the “Perry Mason” television shows.

The character and effect of conspiracy is not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole. *Lessig v. Tidewater Oil Co.*, 327 F.2d 459.

The essential agreement, combination or conspiracy might be implied from the course of dealing or other circumstances. *Frey and Son v. Cudahy Packing Co.*, 256 U.S. 208, 210, 41 S.Ct. 451, 65 L.Ed. 892 and it is elementary that conspiracies are seldom capable of proof by direct testimony and may be inferred from the things actually done, *Eastern States Retail Lumber Ass’n. v. United States*, 234 U.S. 600, 612, 34 S.Ct. 951, 954, 58 L.Ed. 1490.

It appears that from the whole of the evidence Phillips was not only a participant in the conspiracy but actually was its founder, and Phillips is not a stranger to this type of litigation.

The case of *Ingram v. Phillips Petroleum Co., et al*, 252 F. Supp. 674 (1966), considered a conspiracy count

which alleged that the acts complained of were pursuant to a combination and conspiracy in restraint of trade, the object and purpose of which was to secure a monopoly in the lines of trade and commerce involved and that the conspiracy had been accomplished by agreements and understandings among the Defendants to fix the prices of gasoline in the area involved, and the Court stated, at page 678, as follows:

“[4-8] We must conclude from a study of the evidentiary material presented that the evidence in support of conspiracy is less than strong. The statements in the deposition of D. L. Ingram to the effect that he suspect concerted action because price reductions occurred about the same time is the sum total of plaintiffs’ showing. As defendants point out, similarity of business practice, or parallelism, is not invariably indicative of a conspiracy to monopolize in restraint of trade. See *Theatre Enterprises, Inc. v. Paramount Film Distribution Corp.*, 346 U.S. 537, 74 S.Ct. 257, 98 L.Ed. 273 (1954). However, such behavior may, even without previous agreement, be found to violate the antitrust laws. See *Bigelow v. RKO Radio Pictures*, 327 U.S. 251, 66 S.Ct. 574, 90 L.Ed. 652 (1946). Nor need there be simultaneous action or agreement to constitute an unlawful conspiracy. See *William Goldman Theatres v. Loew’s Inc.*, 3rd Cir. 1945, 150 F.2d 738. There need be no express agreement, written or otherwise, and intent to conspire is not necessary if unlawful restraint of trade results from improper conduct. See *Esco Corp. v. United States*, 9th Cir. 1965, 340 F.2d 1000 . . .”

In *United States v. Ward Baking Co.*, 224 F. Supp. 66 (1963) at page 69, the Court stated:

D. Participation

[6, 7] “A person does not become liable as a conspirator unless he knows of the existence of the conspiracy, agrees to become a party, and with that knowledge commits some act in furtherance thereof. * * * This knowledge and participation may be inferred from the circumstances, acts and conduct of the parties.” *United States v. Kensil*, 195 F. Supp. 115, 119 (E.D. Pa. 1961), quoting *Jones v. United States*, 251 F.2d 288, 293 (10th Cir. 1958). “Participation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a ‘development and a collocation of circumstances.’” *Glasser v. United States* 315 U.S. 60, 80, 62 S.Ct. 457, 469, 86 L.Ed. 680 (1941), rehearing den. 315 U.S. 827, (Footnote 3) 62 S.Ct. 629, 86 L.Ed. 1222.

E. Evidence of Conspiracy

[8] As noted above, “it is not necessary to show any formal agreement among the conspirators. * * * The common plan can be and must often be established by what people do rather than by what they say.” *United States v. Georgia*, 210 F.2d 45, 48 (3rd Cir. 1945). See, also, *Interstate Circuit v. United States*, 306 U.S. 208, 59 S.Ct. 467, 83 L.Ed. 610 (1939). “Criminal plottings are spawned in secrecy, and the very nature of conspiracy often precludes proof by direct evidence. For this reason it is an axiomatic principle of law that a conspiracy charge may be sustained on circumstantial evidence alone. * * * Overt acts done in apparent pursuance of a common plan serve as evidence to demonstrate the existence of a conspiracy.” *United States v. Migliorino*, 238 F.2d 7, 9 (3rd Cir. 1956).

Footnote No. 3

Participation in a criminal conspiracy may be shown by circumstantial, as well as by direct evidence. *Delli Paoli v. United States*, 352 U.S. 232, 77 S.Ct. 294, 1 L.Ed. 2d 278 (1957); *United States*

v. Monticello, 264 F.2d 47 (3rd Cir. 1959)."

D. *Attempt to Monopolize*

The testimony shows that Phillips, and the other major oil companies, controlled eighty per cent (80%) of the gasoline market in the State of Montana and in the Helena area (Tr. 27); that the price lowering was aimed at the "Independents", particularly Gasomat (Tr. 109) and others, and that the gas prices were lowered to such an extent that the Appellant, an "Independent", was forced out of business (Tr. 43, 44). Thus, the attempt to monopolize as prohibited by the Sherman Act.

In *Klor's v. Broadway-Hale Stores*, 359 U.S. 207, 3 L.Ed.2d 741, 79 S.Ct. 705, the Court held that a complaint which alleges a restraint in violation of § 1 of the Sherman Act constitutes a per se injury to the public, and said at page 708:

"We think Klor's allegations clearly show one type of trade restraint and public harm the Sherman Act forbids, and that defendants' affidavits provide no defense to the charges. Section 1 of the Sherman Act makes illegal any contract, combination or conspiracy in restraint of trade, and § 2 forbids any person or combination from monopolizing or attempting to monopolize any part of interstate commerce. In the landmark case of *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1, 31 S.Ct. 502, 55 L.Ed. 619, this Court read § 1 to prohibit those classes of contracts or acts which the common law had deemed to be undue restraints of trade and those which new times and economic conditions would make unreasonable. *Id.*, at pages 59-60, 31 S.Ct. at pages 515-516. The Court construed § 2 as making "the prohib-

itions of the act all the more complete and perfect by embracing all attempts to reach the end prohibited by the 1st section, that is, restraints of trade, by any attempt to monopolize, or monopolization thereof * * *." Id., at page 61, 31 S.Ct. at page 516. The effect of both sections, the Court said, was to adopt the common-law proscription of all "contracts or acts which it was considered had a monopolistic tendency * * *" and which interfered with the "natural flow" of an appreciable amount of interstate commerce. Id., at pages 57, 61, 31 S. Ct. at page 514; *Eastern States Retail Lumber Dealers' Ass'n. v. United States*, 234 U.S. 600, 609, 34 S.Ct. 951, 953, 58 L.Ed. 1490. The Court recognized that there were some agreements whose validity depended on the surrounding circumstances. It emphasized, however, that there were classes of restraints which from their "nature or character" were unduly restrictive, and hence forbidden by both the common law and the statute. 221 U.S. at pages 58, 65, 31 S.Ct. at page 515. As to these classes of restraints, the Court noted, Congress had determined its own criteria of public harm and it was not for the courts to decide whether in an individual case injury had actually occurred. Id., at pages 63-68, 31 S.Ct. at pages 517-518-519.

And at page 710 said:

"Monopoly can as surely thrive by the elimination of such small businessmen, one at a time, as it can by driving them out in large groups. In recognition of this fact the Sherman Act has consistently been read to forbid all contracts and combinations "which 'tend to create a monopoly,'" whether "the tendency is a creeping one" or "one that proceeds at full gallop." *International Salt Co. v. United States*, 332 U.S. 392, 396, 68 S.Ct. 12, 15, 92 L.Ed. 20."

E. Damages

The testimony of John Vance with regard damages

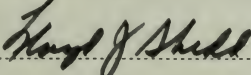
reveal that the Appellant was run out of business and that the value of its business destroyed amounted to the sum of \$60,000.00 (Tr. 46).

The Appellant was entitled to be fairly compensated for all damages, if any, to his business and property, proximately caused by the defendants continued violation of the Federal antitrust laws and such includes damage to the Appellant's business and property. The fact that the precise amount of Appellant's damage may be difficult to ascertain should not affect the Appellant's recovery, particularly if the defendants' wrongdoings have caused the difficulty in determining the precise amount. *Bigelow v. RKO Pictures*, 327 U.S. 251, 66 S.Ct. 574, 90 L.Ed. 652 (1946) ; *Pennington v. United Mine Workers*, 325 F.2d 804 (6th Cir. 1963), cert. granted 377 U. S. 929, 84 S.Ct. 1333, 12 L.Ed. 2d 294 (1964) ; *Richfield Oil Corp. v. Karseal Corp.*, 271 F.2d 709 (9th Cir. 1959).

III.
CONCLUSION

It is submitted that the Court should have allowed the case to go to the jury to decide from the evidence, both direct and circumstantial, if the Appellees conspired in violation of the Sherman Act and if so the amount of damages due Appellant.

Respectfully submitted,



LLOYD J. SKEDD

Attorney for Appellant

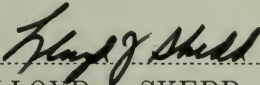
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CERTIFICATE

I certify then, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing Brief is in full compliance with those rules.



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CERTIFICATE OF SERVICE BY MAILING

I, Lloyd J. Skedd, Attorney for Appellant, hereby certify that the foregoing Brief of Appellant, was duly served on each of the following:

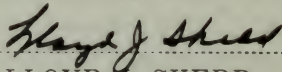
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by mailing three (3) copies to each, at their last known address as set forth above, this ~~14~~¹⁹ day of July, 1967.



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APPENDIX "A"
CURTICE GARDNER

was called as a witness and, have first been duly sworn, was examined and testified as follows:

CROSS-EXAMINATION

BY MR. SKEDD:

Q. State your name, please?

A. Curtice Gardner.

Q. And where do you live, Mr. Gardner?

A. 1204 Hollins.

Q. And what do you do for a living?

A. Operate a gas station.

Q. In Helena?

A. Yep.

Q. You do now?

A. Yeah.

Q. What gasoline station do you operate?

A. Now?

Q. Yes.

A. Chevron.

Q. And where is that located?

A. 1023 North Main.

Q. In the year of 1954 were you employed in Helena?

A. 1954?

Q. Sixty-four. Excuse me.

A. 1964?

Q. Uh-huh.

A. Yes.

Q. Where were you employed?

A. Myself.

Q. And where at?

A. Oh. 1133-11th.

Q. And what was the nature of your employment or business?

A. Service station.

Q. What kind of service station?

A. Phillips.

Q. And were you leasing the station?
A. Was I leasing it?
Q. Yes.
A. Yes.
Q. And who were you leasing the station from?
A. Well, I leased it from Jim Bridges.
Q. Did you have a written lease?
A. No.
Q. What kind of a lease was it? What were the terms of the lease?
A. Just a verbal agreement, lease.
Q. And what were the terms of it? Do you understand me?
A. You mean what—how much?
Q. Did you pay rental?
A. Yes.
Q. And how did you pay the rental?
A. So much gallonage. By gallonage.
Q. And how much a gallon?
A. I believe it was a cent a gallon. Cent or so.
Q. You were selling Phillips Petroleum Gasoline, is that right?
Yes.
Q. Did you have Phillips Petroleum signs on your station?
A. Yeah, they had Phillips signs there. Shield.
Q. Were the signs put on before you got there?
A. Yes.
Q. When did you take over that particular station?
A. I believe it was '60 or '61.
Q. Did you have anybody working with you in the station?
A. Yes.
Q. Would you please describe the color of the station, painting on the building?
A. It's red and white.
Q. Is that a uniform Phillips 66 painting?
A. Well, they are—yes, I guess so. They are all painted the same color.

Q. They are all painted the same, are they not?

A. Yes.

Q. Did you do the repair work on the building, on the station?

A. No.

Q. And who performed that work?

(No response)

Q. First, did you have any repairs on the station on '60 through '64?

A. Well, just the paint is all. I don't think there was ever anything else that I know, remember.

Q. Who painted it?

A. Well, that I don't know. Just painters is all I knew. Who painted it—just the painters is all I knew.

Q. Did Phillips 66 paint it, Phillips Petroleum Company?

A. You mean their painters?

Q. Yes.

A. I don't know.

Q. Do you know who paid for it?

A. I don't know that either.

Q. Did Phillips Petroleum Company have a set of rules and regulations for operating the gas station?

MR. SMITH: Objected to as no proper foundation.

THE COURT: Overruled.

THE WITNESS: Did they have any set rules?

MR. SKEDD: Yes.

THE WITNESS: As far as I know just kept the station clean, kept operated, conditions.

BY MR. SKEDD:

Q. Did they have rules and regulations to guide you in operating the station?

A. Well, I don't quite get what you're driving at there.

Q. Well, were there any regulations that you had to follow in operating the gas station?

(No response)

MR. PICOTTE: Individual defendants object to this question and ask a continuing objection to the whole line of questioning on the ground it is irrelevant, immaterial, and incompetent to prove anything in this action. And on the further ground that the question is ambiguous and indefinite. The meaning of the phrase rules and regulations being wholly undecipherable in this action.

THE COURT: Overruled.

BY MR. SKEDD:

Q. You may answer.

A. Well, as far as I knew wasn't any set rules outside of just keeping your end of it up, my end of it up.

Q. That is what we are talking about, Mr. Gardner, your end, your end of the business.

A. Yes.

Q. Did you have regulations with regard to forwarding credit cards?

MR. PICOTTE: Object to the question unless some sort of regulations are specified in the question. It is unpredictable.

THE COURT: That is sustained.

You might rephrase it.

MR. SKEDD: All right.

Q. Did you have a directive or a set procedure for forwarding claims to Phillips Petroleum Company? Any kind of claims?

A. You mean to turn claims into them?

Q. Yes.

A. That would be—I never did turn any claims into Phillips Petroleum Company.

Q. Did you contribute or pay any monies for the advertising in the papers—

A. No.

Q. —of Phillips Petroleum Company?

A. No.

Q. Did they have a regulation or rule for maintaining rest rooms on the station property?

A. I don't think there is any set rule in there. Of course everybody likes to have things clean.

As far as I know wasn't any set rule. Let it go to suit yourself.

Q. Did Mr. Davidson—was there a Mr. Davidson connected with the Phillips Petroleum Company during this period of time?

A. Davidson—

Q. Pardon me; I withdraw that.

Don Hamilton?

A. Yeah, he was—yes, he was there.

Q. He was some kind of a representative of Phillips Petroleum Company, was he not?

A. Yes, far as I know.

Q. Did he visit your property out there frequently?

A. Did he visit?

Q. Yes.

A. Oh, I'd say he come around probably once a month, maybe.

Q. Did he inspect your property when he came around, for safety?

A. Well, yes, I imagine. He just come in and visit, mostly.

MR. PICOTTE: Move the witness' imagination be stricken.

THE COURT: Overrled.

BY MR. SKEDD:

Q. Now, who set the prices for the gasoline to be sold at your station?

A. I did.

Q. Did you have your deposition taken on October the 24th, 1966, here in Helena?

A. I don't know what day it was.

Q. Handing you—if I may approach the witness, Your Honor—handing you what is filed in this court, filed November 14, 1966, the deposition of Curtice Gardner, taken October the 24th, 1966; and on page five thereof please read line twenty-four through line thirty-two on that page.

(Pause while the witness looks at papers).

Q. Line one through line four on page six.

(Pause while the witness looks at papers).

A. Well, I think when I made this thing I misunderstood the question, I want it—

Q. Mr. Gardner, speak up, will you, please, so that everyone may hear you.

A. Well, as I say, when we did this here, why I just come from work down there and—

MR. PICOTTE: Speak louder, Curt, please.

THE WITNESS:—and I couldn't exactly think what was supposed to be going on here—

BY MR. SKEDD:

Q. Is that—

A. —at the time, but that isn't right.

Q. Is that what you said at the deposition?

A. Well, if you got it down here I suppose that is what I said. But that isn't exactly the way it should have been.

Q. Now, one minute. Did you make a change to that deposition later? Referring (indicates to the first page of changes, changes made by the witness in the foregoing deposition; page five, line twenty-nine.

(Pause while witness looks at papers).

A. Yes, I made a change.

Q. Now, who set the prices at the gas—at your gasoline station where gasoline is sold there?

A. I did.

Q. Huh?

A. I did.

Q. Now, will you read line twenty-four, page five, through the end of the page?

(Pause while witness looks at papers).

Q. Read it out loud, please. Out loud.

A. You want me to read it out loud?

Q. Yes; loud, please.

A. (Reading) I do not think so, nobody ever said anything—well, we just—and I got—you got a mark there, I don't know, struck out—I don't know as we did say we set them, they had certain prices on the stuff, and maybe you call that price setting.

Q. Setting a price?

A. Setting a price.

Q. All right.

A. Price setting.

And you have a question here: Who set the prices?

Q. Answer?

A. Answer: I suppose Phillips Petroleum, I suppose.

Q. Next question.

A. Didn't set them.

Q. Would you say that again?

A. No.

Q. I didn't hear you.

A. You didn't set them; I said no.

Q. Next.

A. Which is wrong. I don't know what you were driving at there.

Q. Obviously. Let's go to the next question.

A. (Reading) You just operated at the station at the price they told you to operate at, is that correct? I said yes.

Q. Next question.

A. And that was all during your lease?

Q. Answer.

A. Yes, Sure.

Q. Now, your changes—

A. Of course—

Q. Now, your changes; refer to the back again—

A. Uh-huh.

Q. —your changes in that testimony.

A. You got me mixed up there.

Q. Now if you will read the change?

A. Yeah, I struck—got strike the answer. But here is the change over here (indicates) isn't it?

Q. Read the change there where it says change.

A. Strike the answer and substitute if you mean the retail price at which gasoline was sold at my station, I set the price.

Q. Now the reason therefor?

A. The reason therefor: I misunderstood the

question, and the change made here is the truth, sure.

Q. Hold that if you will.

Now, when you established these prices for your gasoline at your station did you place it on the pump, the sign?

A. There was no sign on the pump.

Q. Did you post the advertisement that would state the price of gas on the pump?

A. The price that is on the pump?

Q. Yes.

A. They have a little square there where the price is set.

Q. Yes. And who sets the price?

A. I did.

Q. Did Phillips Petroleum or Bridges tell you what to sell it for?

A. No.

Q. They tell you what to put on the pump?

A. No.

Q. Your deposition, the same one, on page eight, line seven; read line seven, please, to yourself, through twelve. Seven through twelve.

A. Want me to read it out loud?

Q. No, read it to yourself first.

THE COURT: Page eight you are referring to?

THE WITNESS: U-huh.

THE COURT: Page eight?

MR. SKEDD: Page eight, Your Honor, line—

MR. PICOTTE: Seven.

MR. SKEDD:—seven through twelve.

(Pause while witness looks at papers)

BY MR. SKEDD:

Q. Have you finished reading it?

A. Yes.

Q. Now I ask you: Did they tell you the price to put on the pumps?

A. No, they didn't tell me exactly the price to put on the pump.

Q. Did they tell you the price that you were going to sell it for?

A. No.

Q. Now will you please read, starting on line eight through—line seven through line twelve of your deposition?

A. Okay.

Q. Read it out loud, please.

A. Well, let's see, it says: Whether set by Phillips, Jim Bridges or who it was set by, I don't know. It was just like it is right now. They tell you to put so much on the pump and that is what it goes.

Q. Next question.

A. They tell you the price you are going to sell it for? And here you got marked a yes.

Q. Answer?

A. Yes.

Q. Now, you changed that, did you not?

A. Yes, I did. I changed that one, too.

Q. The first page of changes on line fifteen, then; will you read the change, please?

A. It says: Strike the entire answer and substitute the following: At all times I raised or lowered the prices of gasoline at my station to meet competition. If the other Phillips stations went down in price, I had to go down to meet the competition, and I always followed the policy that I figured I didn't have any choice in this matter. I had to meet the prices at other stations in the city, and particularly the other Phillips stations, in order to survive in business, and when Jim Bridges or anyone else went down in price, I went down automatically to meet their price, but they were not the ones who changed my price. I was the one who made the decision on that, but my policy was simply to keep track of their prices, in order to meet them. In this sense, but in this sense only, Jim Bridges or the other dealers, when they went down in price, fixed my price, but they never told me I had to go down, nor did I ever make any agreement with them. I just—

Q. Them about—

A. —I just automatically went down when I found out they went down. That was my own personal business policy, and nothing else.

Q. Now would you read to the right, the reason therefor?

A. What I meant to convey by my answer to this question was that in a sense, Jim Bridges fixed the price of gasoline at my station, because when I lowered his price—

Q. No; because when he lowered his price.

A. —because when he lowered his price, he forced me to lower mine for competitive reasons. But he never indicted me to that, I had to lower my price, nor did he ever make the decision as far as my station was concerned. The competitive situation made the decision for me, as far as I was concerned. There was never any agreement between myself and Bridges concerning the retail prices of gasoline at my station, or anyone else.

Q. Now, when did you make these changes; both these two that you talked about in your deposition?

A. Well, it was after this.

Q. Well, where? Where did you make the changes; at what place?

A. You mean where—

Q. Let me withdraw that.

A. I don't know what you mean about where or when.

Q. Did you receive that deposition from the reporter that took it here in Helena.

A. Did I receive that from him?

Q. Yes.

A. No.

Q. Did you go to the notary's office, Mrs. Gwen Blacker, to pick that deposition up when it was completed to read it?

A. I don't think I ever went anywhere to pick it up.

Q. I don't hear you.

A. I said I don't think I ever went anywhere to pick up anything like this.

MR. PICOTTE: Speak up a little louder, Curt.

THE WITNESS: I don't remember picking anything up. Went and got—went to my lawyer.

BY MR. SKEDD:

Q. You went to your lawyer's office, and that is where you went over the deposition?

A. I went up and told him to make the changes. After I got to thinking about it I knew they was wrong.

Q. And those are your own changes?

A. Yes.

Q. Did you discuss the changes with your attorney?

A. Didn't discuss 'em, no. I told him what to write.

Q. These are your words, then in the changes?

A. Yes.

Q. And the reasons therefor?

A. Yes.

Q. And did you write them in handwriting?

A. No.

Q. Did you dictate them on a dictating machine?

A. I don't know—

Q. Sir?

A. Well, I don't remember whether there was anybody there or not.

Q. Did you dictate them to a stenographer?

A. Just Gene and I was there, I'm sure. Just Gene and I. Just Gene.

Q. These answers are typed out, are they not, these changes?

A. Sure.

Q. They are not in your handwriting?

A. Huh? No. of course not. Not this. (Indicates)

Q. That is not your terminology?

A. Well, it is too.

Q. You mean when you changed that—

A. Well—

Q.—that deposition you said, on page—change one, the one we referred to: Strike the answer and substitute, quote, if you mean the retail—

A. I may not have said exact words like that.

Q. Now, Mr. Gardner, did you have a meeting with Mr. Bridges and the other Phillips dealers prior to the lowering of gasoline in March of 1964?

A. Did I have a meeting with them?

Q. Yes.

A. We had several meetings.

Q. And where did you meet?

A. Oh, heavens, far as—well, we just more or less get together in certain—my station, maybe. He was up there.

Q. 1901 North Main Street?

A. No.

Q. You didn't meet at 1901 North Main Street just prior to this lowering of the gas prices?

A. We were down there one night, yeah, but I don't think there was ever—

Q. And you discussed the price changes, did you not?

A. Well, we probably did.

Q. Lowering the prices?

A. Well, yeah, there was something said about lowering the prices all right.

Q. At that meeting did you discuss signs?

A. No.

Q. Did you discuss a figure of thirty-three point nine cents a gallon?

A. We—yeah, we probably discussed it all right.

Q. Did you discuss the Gasomat that was selling independent gasoline for twenty-nine point something?

A. Well, I imagine that was brought in.

Q. Did you discuss the other independent gasoline dealers in the city?

A. Well, that I don't know. Gee whiz, it has

been a long time ago. Probably had everybody in—

Q. Yes.

Did you have a discussion with regard to volume?

A. No.

Q. Did you set a date when you would lower the prices together?

A. No, sir, that was never—

Q. The exact date was not set, is that right?

A. We never discussed about any exact date, no. Never did discuss them, whether he was going to—

Q. Did Mr. Bridges discuss his trip to Spokane with you at this meeting?

A. No.

Q. Did you have other meetings with Mr. Bridges other than at 1901 North Main Street in the month of March, 1964?

A. Not that I know of, as I can remember now.

Q. Did you meet with him at the Zip In and Zip Out?

A. Well, he used to call us up and have us come down for breakfast once in a while.

Q. And particularly in the month of March, 1964?

A. No.

Q. And at those meetings at the Zip In and Out did you discuss prices?

A. No.

Q. What did you discuss at those meetings?

A. Well, just more or less get together, see how everybody was doing was all. Wasn't nothing on price fixing or nothing like that.

Q. Did Mr. Bridges inspect your gasoline station during this period of time in March of 1964?

A. He was up there several times.

Q. Did he inspect it for conditions of health?

A. I don't think so.

Q. Did he make any recommendations, or did

he tell you how your merchandising should be handled?

A. No.

Q. Skipping somewhat—you were still in the gasoline business in June of 1964, were you not?

A. Yeah—March?

Q. Yes.

A. Yes.

Q. March through June?

(Witness nods head)

Q. How long were you in that Phillips station, Curt?

A. Five years.

Q. That would have been until 1965 sometime?

A. Yeah, that's right.

Q. When did you leave the Phillips station?

A. Last of January '65.

Q. Then you went through the price war that occurred after March the 28th, 1964?

A. Yeah.

Q. And all of the major oil companies reduced their price after that, did they not?

A. After '64.

Q. After March of 1964 when Phillips come down in their prices?

A. Yes.

MR. SMITH: I am going to object to the assuming. Will you read the question back, please.

(Reporter reads from record commencing on line 3 of this page and ending on line 8)

THE COURT: Sustained.

MR. SMITH: I move the answer be stricken.

THE COURT: The answer may be stricken.

MR. SMITH: I object—

THE COURT: That portion of the answer may be stricken.

MR. SMITH: Yes.

I object to the question on the ground that it assumes a fact which is not in issue; I mean, has not been proven that Phillips did in fact reduce its prices.

MR. PICOTTE: Individual defendants join in the objection.

THE COURT: Well, it is already ruled on.

BY MR. SKEDD:

Q. Did Mr. Bridges reduce his prices in March of 1964 on regular gasoline in the City of Helena?

MR. PICOTTE: Objected to unless it is specified this is wholesale or retail prices being referred to.

THE WITNESS: Well, I don't remember exact dates.

MR. PICOTTE: Just a moment, please.

THE COURT: Overruled.

MR. PICOTTE: I have an objection.

BY MR. SKEDD:

Q. You may answer.

A. I say I don't remember the exact dates on that.

Q. Well, do you recall the date, the month that the gasoline prices were lowered as you said? Do you remember the month?

A. I don't even remember—well, you got it there. It was in March, last of March. Twenty-eighth.

Q. Of nineteen—

A. But you got it there.

Q. March of 1964?

A. Well, that what you got? You got it down there.

Q. Was Mr. Bridges running a station that sold Phillips Petroleum products that was painted like your in March of 1964?

A. Well, I don't know whether he was running it or leased it out?

Q. Did he have a station here in Helena at that time?

A. That I don't know, whether he owned it or somebody else owned it.

Q. Was Mr. Bridges in the retail gasoline business in Helena in March of 1964?

A. Well, that again I don't—As I say, I don't

know whether he leased it out, whether he was in the retail or not. He had the bulk plant, I do know that.

Q. You don't know whether he was running a gas station in Helena?

A. I don't know whether he run it or leased it.

Q. Well, I understood—excuse me. You said that Mr. Bridges lowered the price of gasoline in his station; am I in error in that?

A. Well, as I say, I don't know what his business was. I never paid no attention to his.

Q. Didn't you lower your prices after Mr. Bridges lowered his prices?

A. Yes.

Q. Well, then, Mr. Bridges was running a station, I take it?

A. Well, he must have hired—he couldn't run two, three places at once.

MR. PICOTTE: Move the witness' answer be stricken as not responsive.

THE COURT: Overruled.

BY MR. SKEDD:

Q. Now, there was another Phillips 66 station here; there were four of them operating during March of 1964, were there not?

A. Yeah.

Q. And they all lowered their prices to the same figure late in the month of March, 1964, did they not?

A. Well, that I can't—I can't say whether they all ever did or not.

Q. Did you attend a meeting in the Steamboat Block late in March of 1964, of retail gasoline dealers?

A. No, I don't think I was there. Don't remember being there.

Q. Did Phillips Petroleum Company ever pay you a subsidy for keeping your price of gasoline low?

A. No.

Q. Did your supplier of gasoline during the

period of 1964 at any time give you a subsidy for keeping your price of gasoline low?

A. In '64?

Q. In 1964.

A. Well, it was later, not—

Q. Was it in 1964?

A. Yes, we got subsidy in '64.

Q. And who did you get the subsidy from?

A. Came from Jim Bridges.

Q. In your discussions at these Zip In and Zip Out or at 1901 North Main, did you discuss a subsidy at all, if gasoline prices were lowered?

A. No.

Q. Was the subsidy paid to you by Mr. Bridges or by Phillips Petroleum Company?

A. By Mr. Bridges.

Q. Do you know who originated it; who started the subsidy for you?

A. No.

Q. Do you have any idea where the subsidy came from?

MR. PICOTTE: Objected to as calling for speculation by the witness.

THE COURT: Sustained:

BY MR. SKEDD:

Q. All right, turn to page ten of the deposition, line twenty-seven. Read that to yourself, please.

(Pause while witness looks at papers).

Q. Have you read that?

A. Yes.

Q. Now do you know where the subsidy originally came from?

A. No, I couldn't say as I know exactly where it come from.

Q. Read line twenty-seven through thirty-one. (Pause while witness looks at papers).

Q. Read it out loud, please.

A. Oh. (Reading) Was that subsidy awarded to you prior to the time that the prices came down in March of '64; I put the answer: Yes, it auto-

matically come through, originally come from Phillips Company, I suppose. That is all.

MR. PICOTTE: We move the witness' supposition be stricken and the jury instructed to disregard it as speculation, Your Honor. He hasn't already testified here where it originated, anything of that sort.

THE COURT: Overruled.

BY MR. SKEDD:

Q. Curtice, with reference to the advertising that you had on your station in March of 1964, what kind of signs did you have advertising the prices for your gasoline on your station prior to the time the prices were lowered?

A. We had none.

Q. Didn't have any?

A. Just what was on the pumps, which they all are, the price.

Q. But you didn't have any other signs anywhere else stating the price of gasoline?

A. No.

Q. It was just a little sign that you see on the pump when you read it?

A. Right.

Q. Says so much a gallon on there, is that right?

A. That's right.

Q. It is in diameter—pardon me. Could you describe the size of it?

A. Oh, I imagine they are about probably two inch letters, inch and a half.

Q. Two inch letters?

A. Inch and a half, maybe.

MR. PICOTTE: I'm sorry, what time is being referred to here?

MR. SKEDD: Prior to the lowering of gasoline.

MR. PICOTTE: Thank you.

BY MR. SKEDD:

Q. They were on the pumps?

A. Well, they are on little wheels about so big around. (Indicates).

Q. But on the pumps that you get the gasoline?

A. On the side.

Q. On the side of the pumps?

A. Inside.

Q. On the inside under the glass?

A. Uh-huh.

Q. And there is a meter that ticks off how much gasoline you are putting in and computes the price automatically, isn't that right?

A. Yes.

Q. And that is the only place you had signs for the price of gasoline at that time on your stations?

A. Yes.

Q. Now in March of 1964, and when these prices were lowered, what kind of a sign did you have, if any?

A. Well, we had these big A board signs when the gas war started.

Q. How big were those signs?

A. Oh, I suppose four by six.

Q. Were they as big as this—might I use this (Indicates) as an illustration, Your Honor?

Was the sign that was made then and placed on your property as big as that board? (Indicates).

A. Yeah, I'd say about that.

Q. Would that be about three—two and a half feet by two and a half feet?

A. Pretty close.

Q. And what wording was placed on these signs?

A. Today's gasoline price.

Q. It says today's gasoline price?

A. Uh-huh.

Q. And then what did it have, a space or something where cards were put in?

A. Yeah, they had a blank, and regular gas.

Q. Did it have a price for premium gas?

A. Yes.

Q. But today's price is on top?

A. Well, I don't know; could have been. I forget now. That has been quite a while ago.

- Q. Yes.
- A. Whether it was on top or on the bottom—
- Q. Did you order that sign that is as large as that board that was put on your property after the gas price was lowered?
- A. Did I order it?
- Q. Did you order it from anyone?
- A. Well, I wouldn't really say that I ordered the sign. It come from the bulk station, I know that.
- Q. Who did it come from?
- A. The bulk station.
- Q. And did you have anything to do with designating what would be placed on the sign?
- A. Yes, I put them on there myself.
- Q. The wording, I mean, of today's prices; did you have anything to do with preparing that?
- A. No.
- Q. Do you know where the sign was made?
- A. No.
- Q. Do you know who made the sign?
- A. No.
- Q. Where did you get the sign?
- A. I said it come from the bulk plant.
- Q. And who put the sign up on your property?
- A. Well, it was left there. We put it up.
- Q. Who put the sign up?
- A. Well, I imagine either I or else my help.
- Q. You didn't put it up? You didn't put the sign up?
- A. Well, I can't—heavens, I don't—you mean did I go out there and put the thing up and stand it up?
- Q. That's what I mean.
- A. That is what you mean?
- Q. Uh-huh.
- A. I'd say I had a hand in it. One man couldn't handle it alone.
- Q. Look at your deposition on page twenty-four on through the rest of page eight.

MR. PICOTTE: The deposition doesn't have twenty-four pages.

MR. SKEDD: Pardon me. Page eight, line twenty-four. Did I say—

MR. PICOTTE: Yes, you said page twenty-four.

MR. SKEDD: Line twenty-four, page eight.

BY MR. SKEDD:

Q. Start on line twenty, be better.

(Pause while witness looks at papers).

A. Want me to read that out loud?

Q. Yes.

A. Line twenty or twenty-four?

Q. Start with line twenty, if you please.

A. Says: Was anyone present? Yes, I imagine.

I had—

Q. Wait a minute.

A. —I had help.

Q. Just a minute.

A. Wait a minute; that's page nine.

Q. Page eight, pardon me.

A. Here.

Q. You got eight there?

A. Yeah.

(Pause while witness looks at papers).

A. I don't know—I don't remember anything like that. That is the reason I said let me break it down. Talking about it here. I will withdraw that question he says.

THE COURT: Do not comment—just answer questions that are asked of you, Mr. Gardner.

MR. SKEDD: Maybe we haven't got the same book here.

THE WITNESS: Right here. (Indicates) You withdrew it.

BY MR. SKEDD:

Q. Yes; go ahead, read the whole thing. Start from line twenty and read it through line thirty-two.

A. Question is: Well, let me break it down. I will withdraw that question. Did you, during March of 1964, have large signs setting—

Q. Stating.

A. —the price of gasoline? I said yes.

Were those signs changed during the month of '65? That is —

MR. PICOTTE: Object to the question as unintelligible.

BY MR. SKEDD:

Q. Answer?

THE COURT: Overruled.

THE WITNESS: (Reading) That is when all—it all started, isn't it, in March?

BY MR. SKEDD:

Q. Would you read that again, please?

A. Something wrong here; don't make sense.

Q. Would you read it out loud, please, so I could hear it?

A. The twenty-fifth line?

Q. Yes.

A. (Reading) That is when it all started, isn't it, in March? Is that when it all started?

Q. Question?

A. (Reading) Yes, if you can recall—if you can recall—that is twenty-seven.

Q. All right; go ahead, all through the page.

A. Oh. (Reading) Put a big—answer: Put a big sign up, that's all I know.

Q. Question?

A. (Reading) Who put the sign up?

I guess you have to say Jim Bridges. His helper put it up as far as I could say. I don't— let's see—I know I didn't.

You didn't put it up, nor your employees?

Q. Or your employees?

A. Yeah

Q. Answer, next page?

MR. PICOTTE: Please try to speak louder, Curt.

THE WITNESS: All right.

Then I got: That is true.

BY MR. SKEDD:

Q. Now it you will turn to the changes, page

two of the changes, page—wait a minute, maybe I got the wrong one. Is that sixteen? (Pause while Mr. Skedd looks through papers).

No, that hasn't been changed. No, that hasn't been changed; that is right.

Excuse me just one minute, Your Honor. (Pause while Messrs. Skedd, Vance and Picotte confer off record).

BY MR. SKEDD:

Q. Turning to the third page—and out of order there—is onther change; that is in the third page, it says page eight, line thirty-one; that is after these other pages we come back to line—page eight, line thirty-one, that is what we are talking about, what you just read. Now will you read that, please, the change?

A. Yeah. It says: I know—

Q. Starts strike.

A. Strike. (Reading) Strike I know I didn't and substitute: I don't think I put up the sign, but I did put the figures for the prices on the sign after the sign itself had been put up. In other words, there were removable numbers, so that the prices advertised on this sign could be changed, and I put those on the sign at all times, and I made the decision as to what the price shown on the sign from day-to-day by me.

MR. PICOTTE: Would be.

BY MR. SKEDD:

Q. Off on the right, reasons therefor?

A. (Reading) I refreshed my memory and this certifies and makes my answer more accurate.

Q. Clarifies?

A. Yes.

Q. Did you make the change yourself?

A. Yes.

Q. And you made it after you had made these other changes in the order that it appears?

A. You mean this? (Indicates).

Q. Yes. You went back and made that one after you made the other changes?

A. Now, wait—I don't follow you there.

Q. Where did you make that change? Was that made on the same day that you made the other changes to this deposition?

A. Yes. Yes.

Q. Page three was made the same day that page one and two were of the changes?

A. After I looked this thing over here to see—

Q. After you read it over?

A. Yes.

Q. Did anyone suggest changes to you?

A. No.

Q. When it appeared in writing you had refreshed your memory then, as I understand it, and now you, or your employees may have put the sign up?

A. What's this?

Q. Do I understand your testimony now that either you or your employees may have put the sign up on the day that the prices were changed?

A. Put the —we changed it—the prices.

MR. SKEDD: We have no further examination.

THE COURT: Mr. Picotte?

MR. PICOTTE: May I have just a moment, Your Honor? (Off record discussion between Messrs. Picotte, Smith and Ottaviana).

MR. PICOTTE I have no question, Your Honor.

MR. SMITH: I have no questions, Your Honor.

THE COURT: All right, you may step down.
(Witness leaves the stand).

APPENDIX "B"

Testimony of Curtice Gardner as taken from the deposition, changes made thereto and testimony on trial.

I. Testimony with regard setting of gasoline prices at his station:

(a) *Testimony on Deposition*

Page Line
No. No.

- 5 24 A. I don't think so. Nobody ever said anything—well,
25 we just—I don't know as we'd say you set them—
26 they had certain prices on the stuff. Maybe you
27 call that setting a price.
28 Q. Who set the price?
29 A. I suppose Phillips Petroleum, I suppose.
30 Q. You didn't set them?
31 A. No.
32 Q. You just operated at the station at the price they
6 1 told you to operate, is that correct?
2 A. Yes.
3 Q. And that was all during your lease?
4 A. Yes, sure.

(b) *Changes made in Deposition*

Change

- 5 29 Strike the answer and substitute "If you mean the retail price at which gasoline was sold at my station, I set the price."

Reason Therefor

I misunderstood the question, and the change made here is the truth.

Page Line
No. No.

Change

5 31 Strike "No" and substitute "Yes."

Reason Therefor

This change reflects the truth. I had full power to set the prices of gasoline sold by me at my station, and I made the decision on that. Nobody but me ever made the decision as to what price I would charge for gasoline.

Change

6 2 Strike "Yes" and substitute "If you mean the price at which I sold gas, the answer is no."

Reason Therefor

This change reflects the truth.

(c) *Testimony at Trial*

125 17 Q. Now, who set the prices at the gas—at
18 your gasoline station where gasoline is sold
there?

19 A. I did.

20 Q. Huh?

21 A. I did.

II. *Testimony with regard who put the price on pumps*

(a) *Testimony on Deposition*

8 4 Q. As I understand it from your deposition, you say the
5 prices for the gasoline were set by Phillips Petroleum

Page Line
No. No.

- 6 Company? Is that correct?
7 A. Whether set by Phillips, Jim Bridges
or who it was set
8 by, I don't know. It was just like it is right
now.
9 They tell you to put so much on the pump
and that's
10 what it goes.
11 Q. They tell you the price you are going to
sell it for?
12 A. Yes.

(b) *Changes made in Deposition*

8 7-10 *Change*

Strike the entire answer and substitute the following: "At all times I raised or lowered the prices of gasoline at my station to meet competition. If the other Phillips stations went down in price, I had to go down to meet the competition, and I always followed the policy that I figured I didn't have any choice in this matter. I had to meet the prices at other stations in the city, and particularly the other Phillips stations, in order to survive in business, and when Jim Bridges or anyone else went down in price, I went down automatically to meet their price, but they were not the ones who changed my price. I was the one who made the decision on that, but my policy was simply to keep track of their prices, in order to meet them. In this sense, but in this sense only, Jim Bridges or the other dealers, when they went down in price, fixed my price, but they never told me I had to go down, nor did I ever make any agreement with them about that matter. I just automatically went down when I found

Page Line
No. No.

out they went down. That was my own personal business policy, and nothing else.

Reason Therefor

What I meant to convey by my answer to this question was that in a sense, Jim Bridges, fixed the price of gasoline at my station, because when he lowered his price, he forced me to lower mine, for competitive reasons. But he never indicated to me that I had to lower my prices, nor did he ever make the decision as far as my station was concerned. The competitive situation made the decision for me, as far as I was concerned. There was never any agreement between myself and Bridges concerning the retail prices of gasoline at my station, or anyone else.

8 12

Change

Strike "Yes" and substitute "No."

Reason Therefor

Except in the sense that when the other dealers in town lowered their price, I felt that I had to lower my prices to meet the competition. But I made the decision and there was never any agreement between any of the dealers that I know of.

(c) *Testimony at Trial*

- 126 2 Q. Did you post the advertisement that
3 would state the
4 price of gas on the pump?
5 A. The price that is on the pump?
6 Q. Yes.
7 A. They have a little square there where
8 the price is
9 set.
10 Q. Yes. And who sets the price?

Page No.	Line No.	
126	9	A. I did.
	10	Q. Did Phillips Petroleum or Bridges tell you what
	11	to sell it for?
	12	A. No.
	13	Q. They tell you what to put on the pump?
	14	A. No.
127	5	Q. Now I ask you: Did they tell you the price to put
	6	on the pumps?
	7	A. No, they didn't tell me exactly the price to put on
	8	the pump.
	9	Q. Did they tell you the price that you were going to
	10	sell it for?
	11	A. No.

III. *Testimony with regard placing of signs*

(a) *Testimony on Deposition*

8	20	Q. Well, let me break it down. I will with- draw that
	21	question. Did you, during March of 1964, have large
	22	signs stating the price of gasoline?
	23	A. Yes.
	24	Q. Were those signs changed during the month of 1964?
	25	A. That is when it all started, isn't it, in March? Is
	26	that when it all started?
	27	Q. Yes. If you can recall.
	28	A. Put a big sign up, that's all I know.
	29	Q. Who put the sign up?
	30	A. I guess you would have to say Jim Bridges. His helper
	31	put it up as far as I could say. I know I didn't.

Page Line
No. No.

- 32 Q. You didn't put it up, or your employees?
9 1 A. That's true.

(b) *Changes made in Deposition*
Change

- 8 31 Strike "I know I didn't" and substitute "I don't think I put up the sign, but I did put the figures for the prices on the sign after the sign itself had been put up. In other words, there were removable numbers, so that the prices advertised on this sign could be changed, and I put those on the sign at all times, and I made the decision as to what the price shown on the sign from day to day would be."

Reason Therefor

I have refreshed my memory and this clarifies and makes my answer more accurate.

(c) *Testimony at Trial*

- 143 10 Q. Did you order that sign that is as large as that
11 board that was put on your property after the gas price was
12 lowered?
13 A. Did I order it?
14 Q. Did you order it from anyone?
15 A. Well, I wouldn't really say that I ordered the
16 sign. It come from the bulk station, I know that.
17 Q. Who did it come from?
18 A. The bulk station.
19 Q. And did you have anything to do with designating
20 what would be placed on the sign?
21 A. Yes, I put them on there myself.

Page No.	Line No.	
	22	Q. The wording, I mean, of today's prices; did you
	23	have anything to do with preparing that?
	24	A. No.
	25	Q. Do you know where the sign was made?
144	1	A. No.
	2	Q. Do you know who made the sign?
	3	A. No.
	4	Q. Where did you get the sign?
	5	A. I said it come from the bulk plant.
144	6	Q. And who put the sign up on your property?
	7	A. Well, it was left there. We put it up.
	8	Q. Who put the sign up?
	9	A. Well, I imagine either I or else my help.
10	10	Q. You didn't put it up? You didn't put the sign up?
	11	A. Well, I can't—heavens, I don't—you mean did
	12	I go out there and put the thing up and stand it up?
	13	Q. That's what I mean.
	14	A. That is what you mean?
	15	Q. Uh-huh.
	16	A. I'd say I had a hand in it. One man couldn't handle it alone.

IV. *Testimony with regard price fixing*

(a) *Testimony on Deposition*

15	30	Q. Mr. Gardner, you said, or at least I understood you to
	31	say, that you didn't fix the retail price of gasoline
	32	in your station, that Phillips did. Now is that
16	1	true or not?
	2	A. Well, I wouldn't say that Phillips fixed it; I don't
	3	know.

Page Line
No. No.

- 4 Q. Whose decision was it to raise or lower gasoline
5 prices? Was it yours, as an independent retail dealer?
6 A. No. It wasn't my idea, I'll tell you that. Heavens,
7 how could I stand to lose—of course, if the other
8 guys go down, you're going to have to go down with
9 them if you want to stay alive, I guess. It wasn't
10 my idea to lower the price of gasoline.
11 Q. Why did you lower the price of gasoline? What was
12 your reason for it?
16 13 MR. SKEDD: I'll object to the form of the question
14 as assuming facts not in evidence. He
15 has testified he didn't lower them; they
16 were lowered for him.
17 Q. Who did lower the price of gasoline in your station?
18 A. Well, to be perfectly frank with you, I think Jim
19 Bridges and LeRoy came up there and changed the pumps
20 and put the signs up.
21 Q. But who made the decision to come down in price in
22 your station? That's what I'm talking about. Did
23 you decide that yourself?
24 MR. SKEDD: The answer was "no".
25 A. It wasn't my idea.
26 Q. Who had the power?
27 A. Well, I don't know. Heavens, I just let them put it

No. No.
Page Line

- 28 up. If he wanted to put up a sign there for
32¢, I
29 was going to sell it for 32¢; that's what it
was.

(b) *Changes made in Deposition*

16 2-3 *Change*

Strike the entire answer and substitute "I fixed the retail price of gasoline in my station."

Reason Therefor

The truth is that the prices of gasoline at my station were fixed by competition, that is, by my own general business policy of automatically coming down to meet the competition, as I have explained in some of the changes to answers above set forth. That is the sense in which I meant my original answers which I have changed here. If the other stations went down in price, I felt that that I had to go down in price to meet the competition and in this sense, I did not feel that I was fixing the price of gasoline in my station. However, this does not mean that I did not have the power to make the decision. I could have kept my prices up if I had wanted to. I never did want to lower the price of gasoline, and I never agreed to it with anybody.

16 18-20 *Change*

Strike the entire answer and substitute "I did."

Reason Therefor

The same reason as given above for the other changes. On reflection I don't really know

Page Line
No. No.

whether Bridges actually did the work of changing the price on the pumps or not. I might have done it. At any rate, what I want to explain here is that I always felt that Jim Bridges jammed this gas war down my throat against my will, and in that sense, he was the one who changed the prices at my station. But I could have kept my prices up if I had wanted to. I lowered the prices of gasoline in my station on my own hook, because I felt I had to do so to meet the competition. Bridges merely told me that he was lowering his prices, and I knew the other dealers were doing the same, and I knew that if I was going to survive. I would have to lower my prices, so I did. There was never any agreement.

16 27-29

Change

Strike the entire answer and substitute "the other dealers had the power, so far as I was concerned, simply by lowering their prices. When they lowered the price, the competitive situation forced me to lower my price."

Reason Therefor

This changed answer reflects the truth. I did not understand the question until I read it, nor did I understand the line of questioning which led up to it.

(c) *Testimony at Trial*

149 23 Q. Do I understand your testimony now that
either you
24 or your employees may have put the sign up
on the day that
25 the prices were changed?
150 1 A. Put the—we changed it—the prices.